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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,088	03/23/2000	Stephen P. Eisenberg	19496-003020US	1465

20855 7590 12/12/2002

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EXAMINER

BRUSCA, JOHN S

ART UNIT PAPER NUMBER

1631

DATE MAILED: 12/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

09/535,088

Examiner

John S. Brusca

Applicant(s)

LIU ET AL.

Art Unit

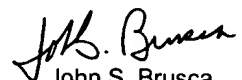
1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 09 May 2002.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☒ A reply was received on 09 September 2002 but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

See Continuation Sheet


John S. Brusca
Primary Examiner
Art Unit: 1631

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Item 7 - Other reasons for holding abandonment: The amendment filed 09 September 2002 is considered non-responsive because the amendment cancels all pending claims and would enter new claims drawn to a non-elected invention consisting of polynucleotides, because the applicants have received an Office action on the merits to a previously elected invention consisting of polypeptides. The attempt to file a CPA simultaneously with the amendment filed 09 September 2002 is improper because the application is not eligible for a CPA filing because the filing date of the instant application is 26 April 2002, the date of a CPA filing in the instant application. As such, the CPA request filed on 09 September 2002 is considered to be an RCE request. An RCE request may not be filed before a final action, nor may an RCE request shift to a new invention. Therefore the RCE request is improper as noted in the communication mailed 14 November 2002. As the extendable time period for response to the restriction requirement mailed 09 May 2002 has expired, this application is abandoned. .